

Exhibit 12

From: **Rebecca Markovits** rebecca.markovits@americanshortfiction.org
Subject: Re: Plagiarism in "The Kindest"
Date: June 25, 2018 at 11:31 AM
To: Dawn Dorland dawndorland@gmail.com

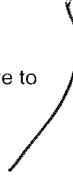


Dear Dawn,

I'm writing to let you know that "The Kindest" is now no longer up on our website. I hope this helps you find some resolution and closure to your natural concerns. Thank you so much for your patience throughout what I know has been a vexing process.

Good luck and best wishes!

Rebecca



On Tue, Jun 19, 2018 at 4:37 PM, Dawn Dorland <dawndorland@gmail.com> wrote:

Ok!

I check email once daily at noon.

On Jun 19, 2018, at 2:31 PM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Dear Dawn,
We have called Sonya's lawyer a few times and are waiting to hear back. I'll let you know as soon as I have an update.
Thanks for your patience!
Rebecca

On Tue, Jun 19, 2018 at 4:03 PM, Dawn Dorland <dawndorland@gmail.com> wrote:

Dear Rebecca,

Do you have an update for me?

Kindly,
Dawn

I check email once daily at noon.

On Jun 15, 2018, at 6:20 AM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Hi Dawn,

Congrats on the baby and good luck with that sleep thing! I vaguely remember something called sleep from my misspent youth! My own little monster was up four times last night and spent the rest of it making those encouraging little drowning noises they make as soon as they have the slightest cold.

I know a little about the DMCA as it relates to ISPs, and presumably the lawyers I've spoken to are familiar with it, but I'll follow up on that, thanks. Just trying to be responsible about this for all concerned.

For what it's worth, though Sonya might not have reached out to you directly, I know her lawyer was attempting to do so on her behalf when he asked me to pass along his contact information, hoping you'd get in touch. If you like, I could also pass on your (or your lawyer's) contact info to him. Probably it will be easier speaking with him, and more efficient than working through me as we try to figure out our exact responsibilities to various parties in all this! They should hear your allegations directly. He'll know far better than I the issues at stake here, and is eager to discuss your concerns with you or your representative. I understand of course that you'd also like us to act, and I'm working on that, but maybe you can reach an agreement quite quickly, and we'll certainly follow your lead.

Ok, more soon.
Rebecca

On Jun 14, 2018, at 7:38 PM, Dawn Dorland <dawndorland@gmail.com> wrote:

Dear Rebecca,

I understand. I actually have a nine-week-old and just came from a newborn sleep class.

Curiously (since she is indeed aware now of my claims), Sonya has not reached out to me at all. I am uncomfortable approaching her based on how she reacted the first time that I did, back in 2016, and because she treated me quite unprofessionally when I later taught at her conference after our conflict (2017).

Has your research included the particulars of the DMCA?

Thanks again.

Yours,

Dawn

I check email once daily at noon.

On Jun 14, 2018, at 5:13 PM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Dear Dawn,

Thanks for this. ASF is actually an independent nonprofit (and hasn't been affiliated with the university here in any way since the 90s), and we're a tiny operation with a tinier budget, which is partly why things might move a little slower as I marshal expert advice than I'd like, so I appreciate your patience! But I myself have an academic background, so I certainly know to take plagiarism seriously, as well as a family connection the the law school here, who have been a good resource. I don't know, exactly, how much the context (fiction vs. academic work) changes the standards of what counts as professional plagiarism--it has been suggested to me by folks in the literary publishing sphere that it might a little--so I'll definitely inquire further as to that as well, in part just to educate myself better. But of course more immediately I want you to be satisfied and have your worries addressed, and I feel confident that can happen, and soon. So I'm working on that, and like I said earlier, if you and Sonya Larson are able to come to any agreement between you we would happily comply with whatever that is! Sorry I wasn't able to call you earlier--I'm actually part-time at the magazine at the moment as I've got an 8-month-old who had dr.'s appointments, etc. today.

More very soon.

Best,

Rebecca

On Thu, Jun 14, 2018 at 4:35 PM, Dawn Dorland <dawn.dorland@gmail.com> wrote:

Dear Rebecca,

Thank you for the thorough explanation. I did not at all feel that your sympathies were insincere. And I believe I have been clear that I never intended for ASF to pull the story based on similarities between my life and that of Sonya's characters (I provided information about my friendship with Sonya at the time of my kidney donation for context and to demonstrate how Sonya had access to my letter).

As for my plagiarism claim, it is not limited to two lines, but rather, to a close paraphrase of my letter's entire text. I was under the impression that ASF had an academic affiliation. If you have not already, it might be useful to reach out to the academic honor department, or equivalent, at UT-Austin for a complete definition of plagiarism (I was trained to recognize plagiarism as part of my university teaching). My attorney will be in touch to clarify my claim.

I was heartened to hear the range of your discussions, Rebecca, before choosing to divert this matter to litigation. I do very much appreciate the seriousness with which you are taking the claim. Thank you.

Sincerely,
Dawn

I check email once daily at noon.

On Jun 14, 2018, at 1:14 PM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Dear Dawn,

I'm so sorry you feel unhappy and frustrated with our response to your plagiarism claim, and sorry in particular if, as it seems, you feel I was insincere in my sympathies. I assure you both that we have been taking the situation seriously as a magazine and that I personally understand why you are upset.

In my eagerness to respond responsibly to your claims, I have consulted with two different lawyers, both of whom advised me (informally) that more likely than not, legally speaking, in terms of copyright, the similar lines in the two letters, which were very limited in scope, were covered by fair use. However, that ultimately that would be down to the court's judgement in this particular case. As far as I know, you and Sonya Larson, or your legal representatives, have not yet arbitrated this issue between you, and as I wrote in my earlier email, we felt that, lacking the expertise to make the legal call on our own we'd await the decision of that arbitration. If, prior to that decision, we had removed a text that we were contractually obligated to publish and that the author had a legal copyright to, we would have been exceeding our authority, legally speaking. That was why we were inclined to let the two of you, or your legal representatives, or a court, settle the matter and would happily abide by that settlement.

The above, of course, regards solely the question of copyright. "Plagiarism" is not a legally significant term, but is rather a question of industry norms and personal ethics. Here, too, after consulting with various people in the industry, this seemed to be a borderline case, with arguments made to us both in favor of removing the offending lines and of respecting the author's creative use of the material. However, as I have written to you, I'm very sympathetic to your feelings about this, so in the hopes of reaching a happy solution, we have discussed with Sonya, pending any more official decision, that she might rewrite the lines in question and replace those lines in our published version of the story. That seems to be a potentially agreeable compromise, and I have been hoping to be able to put it into action very shortly. And, as an editor, I feel much more comfortable asking an author for a revision to a text, than pulling a text that I had agreed in writing to publish without a legal ruling. But, like I have said, I'll leave it to the two of you to settle on something permanently satisfactory.

As far as the larger question, setting aside the similar language in the real and the fictional letters, of the broader similarities between Sonya Larson's story and your lived experiences, I have every sympathy toward your feeling exploited or exposed by that. But that seems to me to be, potentially, a personal betrayal within your friendship, not a matter of publishing ethics. If we were to aim to remove from publication every fictional story in which the author has borrowed heavily from real life, we would find ourselves with very little left, and a lot of understandably upset authors. Writing, as you wrote in your initial email, can be an ethically fraught calling.

I have to step out for a minute now to run an errand, but would happily talk to you on the phone about all this if you prefer--! just wanted to write you back explaining our (difficult) position as clearly as possible first. I'll try to give you a call later, or you can try me at 512-535-5746.

My best wishes,
Rebecca

On Thu, Jun 14, 2018 at 1:44 PM, Dawn Dorland <dawndorland@gmail.com> wrote:
Dear Rebecca,

Thank you for the information. Based on ASF's response to my claim of plagiarism, my attorney and I are pursuing legal remedies.

You might be interested to know that I spoke with an editor of a prominent literary magazine who, when in a similar situation with an online publication, took the following steps:

- 1-Verified the evidence provided by the writer, claiming that his/her work had been plagiarized by one of the journal's authors.
- 2-Decided, in consultation with the magazine's editorial board, that the writer's claims had artistic (based on the text) and ethical merit.
- 3-Rettracted the plagiarized text from the website.
- 4-Published an apology online to the writer whose work had been plagiarized.
- 5-Made clear to the offending writer that his/her work would not be accepted again.

This literary editor told me that he and his magazine responded swiftly after receiving evidence from a writer claiming plagiarism. They were never contacted by lawyers. As a leader of the literary community, he explained that he takes seriously his magazine's role in modeling ethical artistic behavior.

I appreciate the sympathy you expressed for me last week, Rebecca, but this conversation made me wonder--did you consult with members of ASF's advisory board before diverting my plagiarism claim? This has put me in the position of having to spend thousands of dollars to defend my right to my own work.

I am available today until 3p PST via phone and email. 857-234-2650 (mobile)

Sincerely,
Dawn

I check email once daily at noon.

On Jun 13, 2018, at 8:20 PM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Dear Dawn,
I have heard back from Sonya's lawyer, James Gregorio, who has encouraged me to pass along his contact information to you so he can know exactly what he is responding to. He's asked me to convey to you that he will be happy to talk with you (or your attorney) about any concerns you may have regarding Sonya's story. Here's his information:
James Gregorio, Esq.
(Admitted in NY and NC)
Gregorio PLLC
301 S Elm St Ste 507
Greensboro, NC 27401
Ph: 336.645.3595
james@gregorioplcc.com
Good luck, and I hope you receive a satisfactory response!
Best,
Rebecca

On Tue, Jun 12, 2018 at 11:03 AM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Hi Dawn,
I've reached out to Sonya and her lawyer to see if I can just pass along his contact information to you. I think it would

make much more sense, and be more efficient, for you guys just to be in touch directly. That way you'll both have a firmer sense of each other's requests/questions. As soon as I hear back from them, I'll let you know. I hope this will find a speedy and satisfactory resolution!

Good luck!
Rebecca

On Mon, Jun 11, 2018 at 3:14 PM, Dawn Dorland <dawndorland@gmail.com> wrote:
Dear Rebecca,

Thank you for your follow up.

Regarding your question for me, issued on behalf of Sonya and her lawyer, could you please forward or otherwise give me that specific request so that my attorney and I know what we are responding to?

In the meantime, no, I do not grant my permission for you to share my emails to you with Ms. Larson, nor my unpublished letter, for which I hold a copyright.

Thanks very much for your help. Rebecca.

Kindly,
Dawn

857-234-2650 (mobile)

I check email once daily at noon.

On Jun 8, 2018, at 5:59 PM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:

Dear Dawn,

I have been in touch with Sonya Larson about the plagiarism claims and she has requested, or rather her lawyer has requested and Sonya has passed that request on to me, that I forward to them your initial emails to me so that he (her lawyer) can be sure to understand accurately what your claims and requests are. I told them I would check with you first to make sure it's ok before passing your correspondence on. Would it be alright with you if I did that? Let me know as soon as possible, so that they can move forward with addressing your complaint.
Thank you!
Rebecca

On Thu, Jun 7, 2018 at 4:26 PM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote:
Dear Dawn,

I very much sympathize with your feelings about this situation, which must be difficult and personal for you. Setting aside for a moment the question of fair use and the similarities in the letters, I can fully understand feeling exploited by someone else's use of your own intimate and deeply meaningful experiences. As you said in your earlier email, writing can certainly be a messy, ambiguous business sometimes.

However, I'm afraid we don't have the legal expertise to arbitrate what is really a dispute between you and Sonya. We have contractual obligations toward our authors (who warrant that they are the sole authors of their work, and indemnify us against claims) not to pull their work without solid legal grounds, and I think we would need to await either a ruling in the case or settlement between the two of you before removing the story or taking other actions. After receiving your earlier email, I spoke briefly with a lawyer who thought that other moral considerations aside, Sonya's use of your experiences and letter could well still fall under fair use, but he made clear that it wasn't his area of expertise and urged me to consult an intellectual property lawyer. I've since done so and am waiting to hear back from him, but I hope you and Sonya can work out a mutually agreeable solution, in which case we will gladly comply with whatever you two settle on. I trust that you will. In the meantime, I really am sorry for the pain and stress that this has caused you.

Yours,
Rebecca

On Thu, Jun 7, 2018 at 1:42 PM, Dawn Dorland <dawndorland@gmail.com> wrote:
Dear Ms. Markovits,

I appreciate the seriousness with which you are handling my plagiarism claim against Sonya Larson's story "The Kindest" (correspondence below), which I understand took the editors at ASF by complete surprise. Regardless, I wish to hear a response from your organization today by the end of business (CST).

I am concerned that the story against which I have made serious and credible claims continues to be

promoteo by the magazine. I recommend pulling the full text while you consult your legal advisors.

I am available by phone today if you have any questions. 857-234-2650 (mobile)

I am in the process of securing legal counsel.

Kindly,

Dawn Dorland, MTS, MFA
Los Angeles

I check email once daily at noon.

On Jun 5, 2018, at 10:33 AM, Dawn Dorland <dawndorland@gmail.com> wrote:

Dear Rebecca,

Thanks very much for letting me know. I appreciate that you are taking the allegation seriously, and I await your response

Kindly,
Dawn

857-234-2650 (mobile)

On Jun 5, 2018, at 8:31 AM, Rebecca Markovits <rebecca.markovits@americanshortfiction.org> wrote.

Dear Ms. Dorland,

Thank you for bringing this to our attention. We are investigating the situation and consulting with our legal advisers and will have a response for you shortly. This obviously comes as news to us, and we want to give it the serious consideration it deserves, so we appreciate your patience for a day or two more as we look into it.

Yours,
Rebecca Markovits

On Tue, Jun 5, 2018 at 9:53 AM, American Short Fiction <editors@americanshortfiction.org> wrote:
Take a gander at thisss

----- Original Message -----

Subject: Plagiarism in "The Kindest"

Date: 2018-06-04 10:55

From: Dawn Dorland <dawndorland@gmail.com>

To: editors@americanshortfiction.org

Dear Editors of American Short Fiction: Ms. Markovits, Ms. Heitberger, Mr. Brown, and Web Editor, Ms. McReynolds,

My name is Dawn Dorland, and I am a literary writer and editor based in Los Angeles. As a fan of your journal and website, it pains me to be writing you under these circumstances.

I'm reaching out to you at this particular moment, however, about a distressing situation regarding the short story that appears on your splash page as an online Notebook Feature, Sonya Larson's "The Kindest."

In short: I learned in 2016 that my friend Sonya Larson--to whom I had disclosed my intentions in 2015 to donate my kidney to a stranger--had written and prepared to publish a kidney story without telling me that its genesis was my own living kidney donation (another friend tipped me off after hearing Sonya perform "The Kindest" at a public reading). When I approached Sonya about the story, right around the first anniversary of my kidney donation, she was defensive of her actions but acknowledged that the short story she was working on was indeed informed by my gesture.

I didn't read the story when it came out a year later in your emerging writers issue, though--it was too painful. I could see a clear resemblance, even from the story's title, to the information I had disclosed and shared intimately with Sonya ahead of donating my own

kidney. My friend had worked on the story, reading it publicly and publishing audio in multiple places, without ever letting me know and while maintaining our friendship, receiving further kidney-related disclosures that in turn shaped the story. My friend later thanked several writers publicly for helping her revise and place the story with you at ASF last year, without ever acknowledging me.

I did just read Sonya's story over the weekend, however, when I came across it (quite by accident—I was looking for the work of Tommy Orange). I am dismayed to confirm the similarities between Sonya's fictional donor's motivations and my own, as well as the story's title, plucked from an article I'd pointed Sonya to because it had very much inspired and informed my own donation (Larissa MacFarquhar's "The Kindest Cut," which ran in The New Yorker; I think you'll recognize the title).

BUT HERE'S THE PROBLEM: My friend's kidney story, "The Kindest," includes a letter from a donor to her recipient. I believe that the letter in Sonya's story plagiarizes the letter that I wrote to the final recipient in my short kidney chain, a letter to which Sonya had access as a member of a private friends-and-family Facebook group where I shared updates and information about my donation.

Another writer's appropriation of my personal kidney story, fictionally, is one kind of debate; another writer's use of a text that I authored is, to my mind, however, a serious issue. I will forward you my own kidney letter as a separate email attachment for your comparison.

If you agree that the letter in Sonya's story bears a problematic resemblance to the one that I composed and shared with her privately, remedies that I would find acceptable range from ASF's pulling the story to the author making an acknowledgment of my text. I would also, or in addition, consider writing an article for ASF raising ethical issues germane to all writers: How do we balance careerist impulses with our stated artistic ideals (empathy among them)? And for those in the "you shared it, so I stole it" school, does being writers give us permission to violate the bonds of intimacy, to fail one another as friends?

Thank you for your consideration. I can be reached anytime today or this week by email and/or by phone. I am in the process of securing legal counsel.

857-234-2650 [1] (mobile)

Kindly,

Dawn Dorland, MTS, MFA Los Angeles

I check email once daily at noon.

Links:

[1] tel:857-234-2650

The Editors
American Short Fiction

Rebecca Markovits
Co-Editor | American Short Fiction
P.O. Box 4152 | Austin, TX 78765
www.americanshortfiction.org